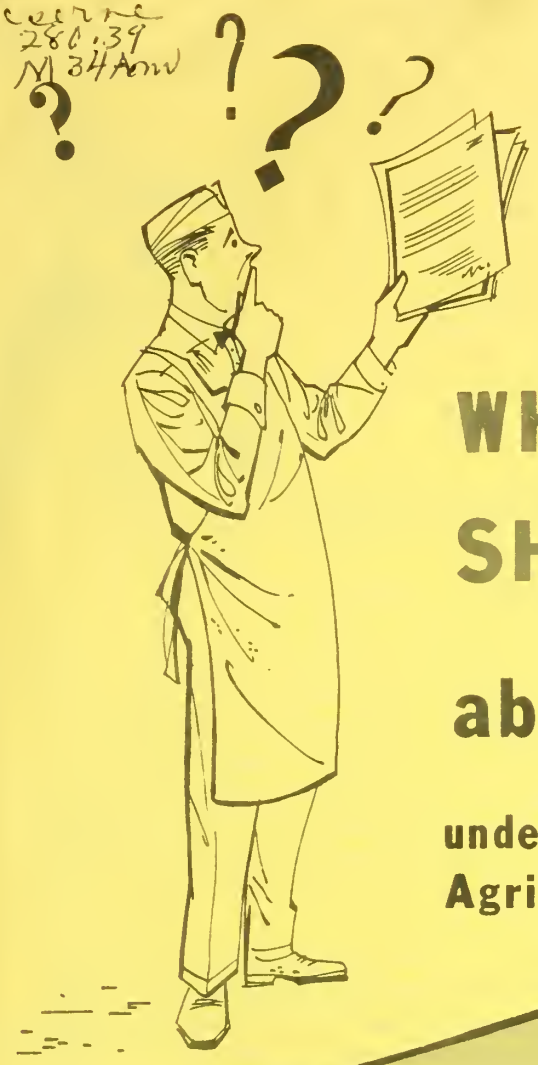
Historic, archived document

Do not assume content reflects current scientific knowledge, policies, or practices.

Reserve
A 281.39
M 34Amw



WHAT RETAILERS SHOULD KNOW

about being licensed

under the Perishable Agricultural Commodities Act . . .

Some food retailers and others do not understand why retailers should be licensed by the U. S. Department of Agriculture under the Perishable Agricultural Commodities Act. They construe this requirement as an unnecessary imposition, and a needless tax from which they derive no benefit.

If retailers were not an integral part of the produce business, there would be reasonable grounds for such a position. But they are a most important sector in the business of buying and selling fresh and frozen produce. They have an important stake in seeing that their purchase transactions in these commodities conform to sound trading practices. It is this simple but basic thesis which makes all retailers doing more than a specified amount of purchasing of fresh and frozen produce subject to the Act.

The purpose of this pamphlet is to provide basic information on the Perishable Agricultural Commodities Act (PACA) so that food retailers can better understand how and why it relates to their activities.

U.S. DEPARTMENT OF AGRICULTURE — AGRICULTURAL MARKETING SERVICE
AMS-357 — FRUIT and VEGETABLE DIVISION — JANUARY 1960

WHAT IS PACA?

The Perishable Agricultural Commodities Act sets up a system for enforcement of contracts in the marketing of fresh and frozen fruits and vegetables. The PAC Act does not tell buyers and sellers what kind of contracts they can make. It does say, however, that once a contract has been made, the parties involved must carry out their bargain unless they have some better reason for not doing so than a change in the market or a change in their own personal situation.

There aren't many Federal laws like the PAC Act. Congress passed it after extensive hearings in which representatives of the fruit and vegetable industry pressed vigorously for special machinery to cope with their special problems. They presented evidence to show that such machinery was needed because of abuses which otherwise could not be effectively curtailed in the marketing of perishable fruits and vegetables. The buyer or seller dealing in these products is especially dependent upon the good faith of the other party to the contract. Most of these perishable products can't be held on track or in a truck for any length of time or diverted to storage while a dispute about the transaction is being settled.

Although the PAC Act was enacted in 1930, it has been amended a number of times and the reasons for having the law are just as sound today as they were when it was first enacted. This is evidenced in the general support for the Act throughout the fruit and vegetable industry.

HOW DOES PACA AFFECT RETAILERS?

Every segment of the fruit and vegetable industry--shippers, commission merchants, brokers and dealers, including truckers, jobbers, wholesalers, and retailers--must observe fair trading rules such as those spelled out in the PAC Act if the industry is to function in an orderly manner. In their capacity as wholesale buyers, retailers are one of the most important links in the chain of distribution of fresh and frozen produce. Retailing functions, as such, are not covered by the Act, but retailers are operating in a manner similar to other dealers in making wholesale purchases of fruits and vegetables. It is as essential for retailers to live up to their contractual bargains as it is for their suppliers. Complaints under the Act have been filed by retailers against suppliers, and vice versa, in the same manner as complaints involving other types of licensees. No one part can be left out

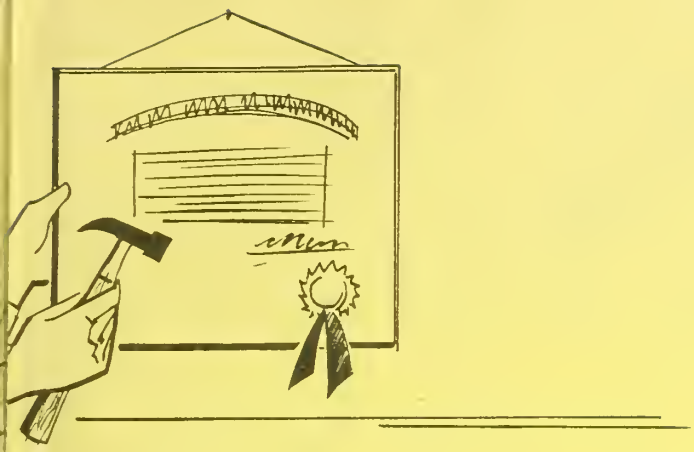
and still expect the whole to operate smoothly and efficiently.

Moreover, in the past several years there have been significant changes in the methods of marketing fresh fruits and vegetables and in the marketing channels through which they flow from growers to retailers. One of these changes has been the rapid growth of independent supermarkets -- both in numbers and in average size. Another has been the sharp increase in direct buying by retailers. Many supermarket operators have found it advantageous to purchase all or part of their supplies directly from shippers, thus minimizing their purchases on local terminal markets, while the same trend also has been evident in purchases by many voluntary retailer groups and corporate chains. With retailers being an integral part of the fruit and vegetable business, they enjoy the same benefits and should assume the same responsibilities under the PAC Act as other parts of the industry.

WHAT'S THE PURPOSE OF PACA LICENSES?

The system of licenses provided for in the PAC Act is the method of enforcing the law. Any person subject to the Act is required to obtain a license and penalties are established for doing business without a license. Since a license may be suspended or revoked for failure to observe the fair trading standards, the licensing requirement provides the basis for action against violators.

Practically all complaints under the Act are those alleging that damages have been suffered because a licensee breached his contract without legal justification. The Department investigates each of these complaints and, based on its findings, tries first to reach an amicable and equitable settlement between the parties. If



this is unsuccessful, the Department will entertain a formal complaint, give both parties an opportunity to submit further evidence, and then issue an order either dismissing the complaint or requiring one of the parties to pay the damages caused by his illegal breach of his contract. The Act states that the respondent's license to do business is automatically suspended if he doesn't either pay an order awarding damages or appeal it to court within 30 days.

The Act requires all commission merchants, dealers, and brokers doing business in fresh or frozen fruits and vegetables in interstate or foreign commerce to secure a license, for which the annual fee is $25. The license remains in effect so long as the annual renewal fee is paid, unless it is suspended or revoked on order of the Judicial Officer of the U. S. Department of Agriculture. License fees collected under the PAC Act are used for administration of the Act.

WHAT RETAILERS ARE REQUIRED TO HAVE A PACA LICENSE?

Retailers are classified as "dealers" under the PAC Act and, therefore, are subject to license when they purchase fresh or frozen fruits and vegetables in wholesale or jobbing quantities on at least 21 days in a calendar year, whether the purchases are made directly from outside the State or from persons who have received the commodities from outside the State.

The authority for and Congressional intent to include retailers under the licensing provision is clearly expressed by the Act [Sec. 1 (6)]. It first defines a dealer as being any person engaged in the business of buying or selling fresh or frozen fruits or vegetables (in wholesale or jobbing quantities) in interstate or foreign commerce. Next, certain exemptions are granted for growers, canners, and retailers.

The provision of the Act applying to retailers states that "no person buying any such commodity solely for sale at retail shall be considered as a dealer . . . in any calendar year until his purchases (in wholesale quantities) are in excess of twenty." Therefore, the only distinction between a retailer and other dealers is that the retailer must purchase produce in wholesaling or jobbing quantities on at least 21 days in a calendar year before he is subject to license, whereas other dealers are subject to license when they engage in business.

"WHOLESALING OR JOBBING QUANTITY"

A "wholesale or jobbing quantity" under the PAC Act has been defined to mean aggregate quantities of fresh and frozen fruits and vegetables totaling one ton (2,000 pounds) or more in weight per day shipped or received or contracted to be shipped or received. This definition applies to all dealers--truckers, jobbers, and wholesalers, as well as retailers.

PURCHASES FROM LOCAL DISTRIBUTORS

Retailers frequently ask whether they are subject to license when they make all their purchases of fresh and frozen produce from local distributors. The Federal courts have consistently held that interstate commerce is not limited to just the transaction which moves the goods from one State to another State. There may be one or more transactions before a lot is shipped from the State of origin or after it arrives within the State of destination and all these transactions are part of interstate commerce. For example, the sale of Washington apples by one dealer in Chicago to another dealer in Chicago is a transaction in interstate commerce. Thus, even though a retailer may purchase only from a local wholesaler, if the products originated in another State, his purchase is a part of the movement in interstate commerce.

HOW MANY RETAILERS ARE SUBJECT TO LICENSE?

The number of independent retail grocers subject to license was estimated for the Department in 1955 by a qualified marketing research organization which conducted a survey of a national sample of independent retail food stores. This survey showed that approximately 7,550 independent retail firms, or slightly more than 2 percent of the total of such firms, were subject to license at that time. These firms do approximately 43 percent of the total independent retail food business in the United States.

It was found that very few stores smaller than the supermarket category buy enough fruits and

vegetables to require a PACA license. On the other hand, a large percentage of supermarkets purchase a sufficient volume to be subject to license.

Many retail food firms have records of their purchases more readily available on a dollar basis than a tonnage basis. For this reason, the USDA has provided retailers with an informal "rule of thumb" that they may find helpful as a guide to whether the firm is subject to a PACA license. The index is based on purchase data from the survey of independent retail food stores. This survey showed that few firms purchasing less than $600 per week[1] of fresh and frozen fruits and vegetables would be subject to license. On the other hand, it showed that practically all firms with purchases valued at more than this amount would be subject to license--that is, they have purchases of fresh and frozen produce aggregating one ton during any one day more than 20 times during the year.

MUST EACH SUPERMARKET BE LICENSED?

Questions sometimes are raised about the requirement that each independent supermarket operator subject to the Act must obtain a license, while a corporate chain operating multiple outlets need have only a single license to cover its entire organization. The PAC Act provides for the licensing of each "person" carrying on the business of a "commission merchant, dealer or broker", as these terms are defined in the Act. The term "person" is defined as including "individuals, partnerships, corporations, and associations" which means each separate legal entity. Under the law, a corporation is a "person" or legal entity in the same way as an individual proprietorship or a partnership. Thus, an independent operator with 3 or 4 supermarket outlets or with only one store -- if he does a sufficiently large volume of business -- has the same liability for a license as a corporation with a larger number of outlets.

Of course, since a retailer is licensed only in his capacity as a wholesale buyer of fruits and vegetables, any complaints under the PAC Act would be against the entire firm and not against one of his individual stores.

[1]This index may be modified from time to time with changes in price levels of fresh and frozen fruits and vegetables handled by retailers.

FOR ADDITIONAL INFORMATION

To obtain additional information about PACA licenses or other activities under the Perishable Agricultural Commodities Act, contact any of the following offices of the:

Regulatory Branch
Fruit and Vegetable Division
Agricultural Marketing Service
U. S. Department of Agriculture

Room 2932
South Agriculture Building
Washington 25, D. C.
Phone: DUdley 8-2272 or
DUdley 8-4180

Room 1119
U. S. Customs House
610 S. Canal Street
Chicago 7, Illinois
Phone: HArrison 7-6910
Extension 323 or 324

Room 2129
300 W. Vickery Street
Fort Worth 4, Texas
Phone: EDison 5-5341
Extension 401 or 423

Room 457
Western Pacific Building
1031 So. Broadway
Los Angeles 15, California
Phone: RIchmond 9-4711
Extension 397

Room 702
139 Centre Street
New York 13, New York
Phone: REctor 2-3100
Extension 390 or 391

14 Old Postal Arcade Building
Winter Haven, Florida
Phone: CYpress 3-1091